



ELEMENT EIGHT

Complaint Processing Procedures

***(29 CFR 37.54(d)(1)(vii))
(29 CFR 37.76 - 37.79)***

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Purpose

The Arizona Department of Economic Security (DES) provides the procedures required for prompt and equitable resolution when any person believes and files a complaint that he/she or another person/group has been or is being subjected to discrimination. The regulations at 29 CFR Part 37: Implementation of the Nondiscrimination and Equal Opportunity provisions of the Workforce Investment Act of 1998 identify the grounds or basis upon which a complaint may be filed.

Narrative

Recipients of financial assistance under WIA Title I are prohibited from discriminating on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief and, against beneficiaries on the basis of citizenship/immigrant status to work in the United States, or participation in programs funded under the Workforce Investment Act (WIA), as amended, in admission or access to, opportunity or treatment in, or employment in the administration of, or in connection with, any WIA-funded program or activity.

If an individual believes he/she has been subjected to discrimination under a WIA funded program or activity, individual may file a complaint, within 180 days from the date of the alleged violation, with the Department of Economic Security, 2400 North Central Avenue, Suite 300, Phoenix, Arizona 85004 (Telephone 602/253-8780 ext. 4500; TDD 271-9633), or you may file a complaint directly with the Director, Civil Rights Center (CRC), U. S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If an individual elects to file a complaint with the recipient, he/she must wait until the recipient issues a decision or until 90 days have passed, whichever is sooner, before filing with the CRC at the address above. If the recipient has not provided the complainant with a written decision within 90 days of the filing, he/she need not wait for a decision to be issued, but may file with the CRC within 30 days of the expiration of the 90 day period. If the complaint is dissatisfied with the recipient's resolution of the complaint, he/she may file with the CRC. Such a complaint must be filed within 30 days of the date the complainant received the recipient's proposed resolution.



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DES IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM

Note: Auxiliary aids and services are available upon request to individuals with disabilities.

The Department has published and disseminated the "Equal Opportunity is the Law" notice as a poster, as well as the WIA EO Officer's name, address and telephone number, as indicated in Element 1. Information regarding complaint procedures and forms is communicated through briefings and memoranda and is available at DES, Local Areas, and One-Stop Centers. Local Workforce Areas and One-Stop Centers are required to process discrimination complaints as outlined by the State of Arizona.

A complainant has to file a discrimination complaint within 180 days of the alleged act(s) of discrimination. This complaint must be filed at either the local level, state level or with the Civil Rights Center (CRC) in Washington, D.C. The WIA's EO Officer must process the complaint and issue a Notice of Final Action, in accordance with the instructions set forth below, within 90 days of the date the complaint was filed.

DES has developed and published complaint procedures. The EO notice, "Equal Opportunity is the Law", provides basic instruction on filing complaints of discrimination and is made available to recipients of financial assistance under WIA Title I and the general public, as well as applicants for service, registrants, participants, claimants, applicants for employment and WIA-financed employees.

In addition, DES provides notice and communicates policies, guidelines and information regarding complaint-processing procedures, including those pertaining to EO, to its 15 local areas and subrecipients through correspondence, written instructions and announcements.

Manuals are updated as needed. DES provides current information to staff, clients and the general public. TDD/TTY or relay system is available for persons with hearing impairments.

The complainant may file with the CRC if he/she is dissatisfied with the Notice of Final Action issued at the state level. The complainant has 30 days to file with CRC after receiving this Notice.

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Only the CRC has the authority to accept complaints filed beyond the 30 day time period. The CRC may extend this time limit if the Notice of Final Action did not provide complete filing instructions or other good cause shown by the complainant. The same authority rests with the CRC when a complaint is filed beyond the initial 180 day period.

Under 29 CFR Part 37, an individual has the option of filing a complaint either with the recipient of WIA funds or directly with the Director of Civil Rights Center (CRC).

A. Should a complainant choose to file with the recipient, the recipient shall process the complaint within 90 days.

Recipient is defined for equal opportunity purposes as any entity to which federal financial assistance under any titles of WIA is extended, either directly or through the Governor or through another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA funded program or activity and the Governor. Recipient includes, but is not limited to: State Employment Security Agencies, State-level agencies that administer WIA funds, local Area grant recipients and service providers or designee.

Within the 90 days, the recipient shall offer a resolution of the complaint to the complainant. If, by the end of the 90 days, the recipient has not completed the processing of the complaint or has failed to notify the complainant of the resolution, the complainant or his/her representative may, within 30 days of the expiration of the 90 day period or upon notification of resolution, file with Director of CRC.

B. Should the complainant choose to file directly with CRC, recipient staff shall assist the complainant (if requested) in completing the Complaint Information Form. For those individuals not requesting assistance, but needing forms, addresses, etc., recipient staff shall provide the necessary Complaint Information Form.

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Recipients will notify complainants that filing time for complaint initiated more than 180 days from the date of the alleged discrimination may be extended by the Director of CRC for good cause.

COMPLAINT INVESTIGATION

- A. Upon receipt of a complaint or information alleging discrimination, the EO Officer of the entity receiving WIA funds shall:
 - 1. Promptly log and initiate a review or investigation of the complaint;
 - 2. Provide notice to all parties of the specific charges;
 - 3. Inform both parties of their right to representation;
 - 4. Inform both parties of their right to present evidence;
 - 5. Inform both parties of their right to rebut evidence presented by others; and
 - 6. Provide for a decision made strictly on the documented evidence.
- B. The name of the complainant shall be kept confidential, to the extent possible. When consent has been provided for the release of the complainants' identity, disclosure should be kept under the conditions which will promote continued receipt of confidential information.
- C. No person, organization or agency may discharge or in any manner retaliate against any person because that person has filed a complaint, instituted any proceeding related to the Act, testified, or is about to testify, in any proceeding or investigation, or has provided information or assisted in an investigation.
- D. The funded entity's EO Officer shall review the complaint for accuracy and completeness. From the date of receipt, the EO Officer has 60 days to attempt to resolve the complaint.

WHO MAY FILE

Any person may file who believes that he/she or any specific class or group of individuals has been or is being subjected to discrimination on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief and for beneficiaries only, citizenship or participation in WIA. The complaint must be in writing and filed by the complainant or by an authorized representation.



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WHERE TO FILE

The complainant may file a complaint with the recipient of WIA funds, or with the Arizona Department of Economic Security's Office of Equal Opportunity, 2400 North Central Avenue, Suite 300, Phoenix, Arizona 85004 (telephone 602/253-8780 ext. 4500, TDD 602/271-9633) or the complainant may file a complaint directly with the Director, Civil Rights Center, U. S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, dC 20210, telephone 202/219-7026.

WHEN TO FILE

A complaint must be filed within 180 days of any alleged discrimination. However, if good cause is shown, the Director or CRC may extend the filing time.

COMPLAINT CONTENTS

Each complaint shall be in writing and shall:

- A. Be signed by the complainant or his/her authorized representative.
- B. Contain the complainant's name and address (or specify another means of contacting him/her);
- C. Identify the respondent; and
- D. Describe the complainant's allegations in sufficient detail to allow the recipient to determine whether the complaint:
 - Falls under the recipients jurisdiction;
 - Was timely filed; or
 - Has apparent merit.

This information may be provided by completing USDOL-CRC's Complaint Information Form.

RIGHT TO REPRESENTATION (Elements of Due Process)

The recipient's complaint-handling process should provide for:

Notice to all parties of the specific charges and responses of those involved;

The right of both parties to representation;

The right of both parties to present evidence;

The right of both parties to rebut evidence presented by others; and

A decision made strictly on the documented evidence.



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ELECTION OF COMPLAINT LEVEL

This policy sets forth a three-level system that allows any person or organization to file a complaint at either the local level, i.e., local area EO Officer; the state level, i.e., state Office of Equal Opportunity; or federal level, i.e., Director of CRC.

If the complainant elects to file with CRC rather than with the recipient, the recipient can assist the complainant in filling out CRC's complaint Information Form and forward it to the Director.

If the complainant elects to file at the state level, the complaint will be referred to the proper recipient.

If the complainant elects to file a complaint at the local level, the local area EO Officer shall review the complaint for accuracy and completeness, and send a copy to the state EO Officer. From the date of receipt, the local area EO Officer has 60 days to attempt to resolve the complaint. Included in the 90 days, the complainant is offered to utilize the mediation process to resolve the complaint.

All complaints alleging discrimination shall remain with the subrecipient for a period not to exceed 90 days. During this period, the subrecipient shall make every effort to resolve the complaint. Should the subrecipient fail to conciliate the complaint, it shall be forwarded to the state EO office by the end of the 90th day after the date of filing.

The State will conduct an investigation in accordance with these procedures. The WIA EO officer will conduct an investigation upon receipt of the complaint. Once the Complainant receives the State's decision, and if the complainant is not satisfied with the decision, the complainant is made aware that he/she has 30 days to file with CRC.

Upon receipt of a complaint for investigation, the complainant is notified in writing about the mediation option as one of the means to resolve their complaint. (See attached AZ ADR Form). The State of Arizona Alternative Dispute Resolution (ADR) process and procedure are outlined later in this text.



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NOTIFICATION OF NO JURISDICTION

The recipient shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIA. (See State of Arizona Discrimination Procedures attachment)

Based on the information provided by the Complainant, an EO Officer may declare that he/she has no jurisdiction over the complaint for one or more of the following reasons:

- The basis for the complaint is not covered by the prohibitions set forth in 29 CFR Part 37.
- The complainant was not filed within the prescribed time frame - within 180 days of the date that the discriminatory act(s) allegedly occurred.
- The complaint is against an agency, employer, organization or individual within an entity that is not a recipient of federally funded financial assistance as defined in 29 CFR Part 37.4. The EO Officer may provide the address and phone number of the appropriate agency with jurisdiction over the complaint, if applicable.

A Notice of Lack of Jurisdiction explaining the reason for the decision should be provided in writing within 10 days. Inform the complainant that he/she has 30 days from the date of receiving the notice to file a complaint with the CRC. Send a certified letter **“return receipt requested”**. Send the original signed complaint (keep a copy for the local file) along with the Notice

When the EO Officer determines the discrimination complaint is within their jurisdiction, then the Notice of Receipt of Complaint is issued. This notice to the complainant should contain the following information:

- Notice that the complaint has been received.
- Assigned complaint number (location, number of complaint, year)
- Restatement of the issues raised in the complaint.
- Notice of which issues have been accepted and/or rejected for investigation.
- A notice that the complainant has a right to representation by any individual he/she chooses during the complaint process. Legal fees are the responsibility of the complainant.

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- A time frame notice for fact-finding or investigation of the circumstances of the complaint (approximately 15 days). Preliminary fact-finding will take less time when the complainant selects Alternate Dispute Resolution. Preliminary fact-finding describes the issues raised by the complainant and the respondent.
- An offer of ADR, as appropriate, should be encouraged and offered at every step in the complaint process.

DES will use mediation as the ADR option/strategy. The choice to use mediation rests with the complainant. Cases when mediation is not appropriate include complaints that are high profile, involve legal issues, involve policy, precedent setting and impact others in a protected group. The local EO Officer shall be responsible for referring the complainant to the State EO Officer for mediation resolution of a complaint. The ADR/Mediation process is included as an information sheet (See attachment).

A notice that the customary fact-finding procedure, followed by a Notice of Final Action is the other option in processing the complaint. This notice must be provided to the complainant in the event that a resolution attempt through mediation is unsuccessful.

The State EO Officer shall contact and advise the identified respondent in writing that a complaint alleging discrimination has been filed and is being processed. Provide a summary of the complaint and notice that any form of retaliation or intimidation is against the law. Let respondent know if mediation has been offered to the complainant as a means of resolution. Send copies to WIA EO Officer WDA/Des, 1789 W. Jefferson St., Phoenix, AZ 85007, 602/542-2484, Fax 602/542-2491, e-mail Sissifu@mail.de.state.az.us.

Complaint investigation or fact-finding includes the following:

1. A preliminary interview with the complainant to gather statements.
2. Collect any evidence the complainant may have to support allegation(s).
3. Interview the respondent, obtain statement, and any evidence supporting the response to the complaint.

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4. Inspect the location where alleged discrimination occurred (specifically in allegations of sexual harassment and inaccessibility to individuals with a disability).
5. Review documents: data, reports, correspondence, contracts, plans, personnel or participant records, policies, and procedures related to activity(ies) which gave rise to allegations of discrimination.
6. Prepare fact-finding report with conclusion (probable cause or no probable cause that respondent may have discriminated) and maintain file (include complaint number on report/file).
7. End copy of fact-finding report to WIA EO Officer.

As indicated earlier, the State of Arizona DES has established Alternative Dispute Resolution (ADR) or mediation as an option for complainants to utilize in case of an alleged dispute based on 29 CFR Part 37 Nondiscrimination and EO Provisions against any recipient of financial assistance under WIA Title I.

ALTERNATE DISPUTE RESOLUTION/MEDIATION

The Workforce Investment Act has incorporated Alternate Dispute Resolution (ADR) as an alternative to the traditional complaint resolution process and as a significant component in the complaint Processing Procedures. ADR is an attempt to provide faster, less expensive, contentious, and more productive results in resolving and eliminating workplace discrimination. DES has selected mediation as its form of alternative dispute resolution. Mediation is a process in which an impartial third party assists opposing parties in reaching a negotiated resolution to a complaint. The decision to mediate is completely voluntary and confidential for the charging party and the respondent. Mediation gives the parties an opportunity to discuss the issues raised in the complaint, clear up misunderstandings, determine the underlying interest or concerns, find areas of agreement and incorporate those areas of agreement into solutions. A mediator does not resolve the complaint or impose a decision on the parties. Instead, the mediator facilitates an agreement between the two parties on a mutually acceptable solution to their dispute. Information disclosed during this process will not be revealed to anyone.



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Simply, mediation is a win win dispute resolution. Mediation will usually take place in the process prior to an investigation of the allegation. Offering mediation to the parties prior to an investigation encourages communication, problem solving, and saves resources. Mediation is independent Of and does not supplant applicable equal opportunity complaint procedures, grievance procedures and/or collective bargaining agreements. Mediation is appropriate for use with employee and customer discrimination complaints.

WHY IS MEDIATION ADVANTAGEOUS?

1. Mediation is fair. Mediators are neutral third parties who have no interest in the outcome. Their role is to help the parties resolve the dispute.
2. Mediation is a confidential process. The sessions are not tape-recorded or transcribed. Notes taken during this process are discarded.
3. Settlement agreements executed during mediation do not constitute an admission of wrongdoing by the respondent.
4. Mediation is an efficient process that saves time and money. Successful mediation avoids a time-consuming investigation and achieves a prompt resolution of the complaint. The majority of mediations are completed in one session.
5. Mediation is predictable. With mediation, both parties participate in planning a resolution and they control the outcome of their dispute.
6. Mediation provides tools to deal with future conflicts. Mediation teaches collaboration that can be used to prevent additional conflicts both in the personal and professional setting.
7. Mediation is an information opportunity to resolve a complaint.

PROCEDURES FOR ADR

All requests for mediation will be processed through the DES EO Officer. The EO Officer will proceed as follows:

- A. Contact the parties no later than ten (10) days of receipt of the complaint to determine their willingness to mediate and secure a written agreement to that effect.
- B. Request the complainant provide a statement of the issues and the relief sought within five (5) calendar days of receipt of the request for information (or by specific date, as appropriate).



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- C. Send written confirmation of mediation conference to each party. The written notice should include the date, time and location of the mediation conference, a statement of the issues/basis of the complaint and the relief sought. Any persons representing the parties should also be notified of the conference. The resolution should be held in sufficient time to reach resolution or closure within 60 days of filing of the initial complaint.
- D. If a resolution is reached, agreement should be put into a written documentation, signed and dated.
- E. If there is no resolution, the complainant should be advised of his/her right to file a complaint with the Civil Rights Center, US Department of Labor.

A preliminary fact-finding report serves as background information when the WIA EO Officer is attempting to resolve a complaint informally and/or when the complainant has chosen mediation to resolve the dispute.

The full fact-finding report is the supporting documentation for the Notice of Final Action when a dispute is not settled through mediation. The Notice is issued in all situations. Both reports are the responsibility of the local EO Officer.

Notice of Final Action must be provided to the complainant (copy to respondent and State EO Officer) within 90 days of the date that the complaint was filed with the recipient/local EO Officer. The notice must be sent **"return receipt requested"**.

The following must be covered in the Notice:

1. Provide the decision and explanation of each issue of discrimination that was accepted for resolution. Clearly state what specific action has been taken or will be taken (and when) to complete the resolution.
2. If ADR was used successfully, provide a description of how the parties resolved the complaint. Attach a copy of the signed settlement agreement. If mediation efforts did not result in an agreement, then advise the complainant that he/she may file the original complaint with the CRC within 30 days of the date that the Notice of Final Action was issued. Similarly advise the complainant if the regular complaint process was used. In addition, if mediation is unsuccessful the complainant is advised to notify the State EO Officer within 5 days after receiving the Final Notice.



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3. If a settlement agreement has been reached through mediation, provide notice that if the agreement is breached by one of the parties to the agreement, then the non-breaching party to the agreement may file a complaint with CRC within 30 days of learning that the agreement was breached.

To review the State of Arizona's DES ADR/Mediation Process, see the attached copy of the Mediation Process.